

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with William English, Reg. No. 42,515; on December 22, 2009.

2. The application has been amended as follows:

In claim 1, line 12, after "tool," insert --configured for holding and cutting the leg and--.

In claim 5, line 11, after "tool," insert --configured for holding and cutting the leg and--.

In claim 21, line 3, delete "a leg," and in its place, insert --two legs--.

In line 4, delete the second occurrence of "said," and in its place, insert --each--.

In line 7, delete "a," and in its place, insert --the--. Also in line 6, delete "end," and in its place insert --ends--.

In line 8, delete "leg after the leg has," and in its place, insert --legs after the legs have--.

In line 9, delete "leg," and in its place, insert --legs--.

In line 10, delete "leg," and in its place, insert --legs--.

In line 11, delete "end," and in its place, insert --ends--. Also in line 11, delete " leg; and," and in its place, insert --legs with a tool; cutting the legs with the tool; and--.

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In line 12, delete the first occurrence of "the," and in its place, insert --each--. Also in line 12, delete "a," and in its place, insert --the--.

In claim 22, line 2, delete the first occurrence of "leg," and in its place, insert --legs--. Also in line 2, delete the second occurrence of "the," and in its place, insert --each--.

In line 4, delete "the," and in its place, insert --each--.

In claim 24, line 3, delete "a leg," and in its place, insert --two legs--.

In line 4, delete the second occurrence of "said," and in its place, insert --each--.

In line 7, delete "a," and in its place, insert --the--. Also in line 7, delete "end," and in its place, insert --ends--.

In line 8, delete "leg after the leg has," and in its place, insert --legs after the legs have--.

In line 9, delete "leg," and in its place, insert --legs--.

In line 11, delete "end," and in its place, insert --ends--. Also in line 11, delete "leg; and," and in its place, insert --legs with a tool; cutting the legs with the tool; and--.

In line 12, delete the first occurrence of "leg," and in its place, insert --legs--. Also in line 12, delete "a," and in its place, insert --the--. Also, in line 12, delete the second occurrence of "leg," and in its place, insert --legs--. Also in line 12, delete "end," and in its place, insert --ends--.

In claim 25, line 9, after "fastener," insert --with a tool--. In line 11, delete "a," and in its place, insert --the--.

In claim 26, line 9, after "tissue," insert --with a tool--.

In line 10, after the first occurrence of "leg," insert --with the tool--.

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In line 11, delete "a," and in its place, insert --the--.

Add the following new claims:

--77) (new) The fastener apparatus defined in claim 5, wherein the tool comprises a cutter mechanism that is movable along the tool to cut the legs of the fastener held by the tool.

78) (new) The fastener apparatus defined in claim 5, wherein the tool comprises an anvil mechanism movable along the tool for bending the new after the leg is cut to force the new end back towards the base to secure the fastener to tissue.

79) (new) The method of claim 26, wherein the tool comprises a cutter mechanism and wherein cutting the leg comprises moving the cutter mechanism along the tool to shear the leg.

80) (new) The method of claim 26, wherein the tool comprises an anvil mechanism, and wherein bending the leg comprises moving the anvil mechanism along the tool to deform the leg.--

Cancel claim 23.

3. The following is an examiner's statement of reasons for allowance: With respect to claim 1: None of the prior art of record, alone or in combination, discloses a fastener apparatus including, inter alia, a body having a base and a leg extending from the base, a pledget on the body adjacent to the base, and a tool, where the tool is configured for holding and cutting the leg and for bending a new end of the leg after the leg is cut to

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force the new end back towards the base. With respect to base claim 5: None of the prior art of record, alone or in combination, discloses a fastener apparatus including, inter alia, a U-shaped body having a base and two legs extending from the base, a pledget on the body adjacent to the base, and a tool, where the tool is configured for holding and cutting a leg and for bending a new end of the leg after the leg is cut to force the new end back towards the base. With respect to base claims 21 and 24:

None of the prior art of record, alone or in combination, discloses a method of placing a fastener in a patient, the method including, inter alia, providing a fastener having a body having a base and two legs, driving pointed ends of the fastener through tissue, and engaging ends of the legs with a tool and cutting the legs with the tool, where the tool is used to bend the legs to deform the legs and force the ends back towards the base.

With respect to base claims 25 and 26: None of the prior art of record, alone or in combination, discloses a method of placing a fastener in a patient, the method including, inter alia, providing a fastener having a body having a base and a leg, driving a pointed end of the fastener through tissue, and cutting the leg with a tool, where the tool is used to bend the leg to deform the leg and force a new end back towards the base.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is 571-272-4707. The examiner can normally be reached on M-TH:6:30-4:00; alt. Fri.: 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tan-Uyen (Jackie) Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Julian W. Woo/  
Primary Examiner, Art Unit 3773